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7 Attorneys for Defendant
8 BNSF RAILWAY COMPANY sued
9 Herein under its former name
10 THE BURLINGTON NORTHERN AND
11 SANTA FE RAILWAY COMPANY
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PRODUCE COUNTRY SALES, LLC. a
Washington limited liability company,

Plaintiff,

vs.

TRI-CITY RAILROAD COMPANY, LLC.,
a limited liability company;
WASHINGTON STATE TRANSLOAD
COMPANY, LLC., a limited liability
company; and BURLINGTON
NORTHERN AND SANTA FE RAILWAY
COMPANY, a corporation,

Defendants.

CASE NO. 05-CV-5106-EFS

[Assigned to the Honorable Judge Shea]

**STIPULATION OF COUNSEL
REGARDING CONFIDENTIALITY
OF DOCUMENTS AND
PROTECTIVE ORDER THEREON**

TO THE COURT, TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:

WHEREAS defendant BNSF Railway Company ("BNSF") has in its
possession and anticipates receiving additional documents which it deems to be
private business documents containing proprietary commercial information created

1 through the utilization of the proprietary Star Trak technology (hereafter “the Star
2 Trak documents” and “Star Trak information”);

3 Such Star Trak documents known to date are currently marked and identified
4 respectively as BNSF 097, BNSF 098, BNSF 151, BNSF 152, BNSF 153, BNSF
5 189, BNSF 190, BNSF 222, BNSF 223, BNSF 224, BNSF 225, BNSF 270, BNSF
6 271, BNSF 272, BNSF 351, BNSF 352, BNSF 388, BNSF 389, BNSF 390, BNSF
7 391, BNSF 392, BNSF 393, BNSF 394. It is anticipated that BNSF may in the
8 course of this litigation obtain from Star Trak additional documents relating to the
9 railcars at issue which will also fall within the definition of “Star Trak” documents;

10 WHEREAS BNSF wishes to maintain the confidentiality of all such Star
11 Trak documents and their contents and any later discovered Star Trak documents
12 and their contents to protect BNSF’s proprietary interest in such records and the
13 business advantages it derives therefrom;

14 WHEREAS BNSF is also in possession and/or its subsidiary Western Fruit
15 Express is also in possession of documents relating to the maintenance of the rail
16 cars at issue in this case (hereafter the “car maintenance records”);

17 WHEREAS BNSF deems these car maintenance records to be proprietary
18 confidential business records containing information regarding BNSF’s processes of
19 car maintenance by which BNSF has an advantage over competitors in its industry
20 and which BNSF wishes to maintain as confidential to protect BNSF’s proprietary
21 interest in such records and the business advantages it derives therefrom;

22 WHEREAS BNSF wishes that all such Star Trak documents and car
23 maintenance records and their contents not be disclosed to any persons other than to
24 counsel for the parties of record in this matter and/or to that small number of
25 persons among their clients or experts in this litigation with a need to analyze the
26 Star Trak documents in order to effectively participate in the litigation and/or
27 settlement of this matter;

28

1 WHEREAS BNSF wishes that all such Star Trak documents and car
2 maintenance records, if a party deems that they need to be filed with the Court in
3 this matter, be filed under seal;

4 WHEREAS plaintiff PRODUCE COUNTRY SALES, LLC. and defendants
5 TRI-CITY RAILROAD COMPANY, LLC. ("TCRC") and WASHINGTON
6 STATE TRANSLOAD COMPANY, LLC ("WSTC") have agreed with BNSF to
7 maintain the confidentiality of all such Star Trak documents and car maintenance
8 records as desired by BNSF;

9 NOW THEREFORE the parties hereto stipulate and agree that all documents
10 which BNSF identifies as confidential Star Trak documents and car maintenance
11 records shall be protected and kept confidential as set forth directly below:

12
13 1. The Star Trak documents and car maintenance records will be marked
14 confidential by BNSF upon disclosure to each party to this action by
15 the marking: "CONFIDENTIAL";

16
17 2. The Star Trak documents and car maintenance records will not be
18 disclosed to any persons other than to counsel of record for the parties
19 and to each of those small number of persons from the named parties
20 (or their experts) with a need to analyze the Star Trak documents in
21 order to effectively participate in the litigation and/or settlement of
22 this matter;

23
24 3. That all such Star Trak documents and car maintenance records and
25 any copies of such documents will be destroyed and disposed of
26 within ten days of the conclusion of the litigation to counsel for
27 BNSF;

1 4. That if any party which deems it necessary to attach such Star Trak
2 documents and/or and car maintenance records as an exhibit to any
3 papers filed with the Court in this matter, then they shall do so only
4 under seal so that members of the public will not have access to the
5 Star Trak documents;

6
7 5. That if any Star Trak documents or car maintenance records are made
8 exhibits to a deposition in this case all such exhibits must be sealed
9 and any such deposition exhibit so sealed, if it be thereafter filed in the
10 Court before which this matter is pending, will also be filed under
11 seal.

12 IT IS SO STIPULATED.

13 Dated: March __, 2006

LUKINS & ANNIS

14
15 JED W. MORRIS
Counsel for Defendant
BNSF RAILWAY COMPANY

16 Dated: March __, 2006

LAW OFFICES OF
LESLIE G. MCMURRAY

18
19 Leslie G. McMurray
Counsel for Defendant
BNSF RAILWAY COMPANY

20 Dated: March __, 2006

EISENHOWER & CARLSON, PLLC
RYNN & JANOWSKY, LLC

22
23 John R. Ruhl
Counsel for plaintiff
PRODUCE COUNTRY

24 Dated: March 15, 2006

MILLER, MERTENS & SPANNER,
PLLC

26
27 BRANDON JOHNSON
Counsel for Defendants
28 TRI-CITY RAILROAD COMPANY,
LLC.; WASHINGTON STATE
TRANSLOAD COMPANY, LLC.

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EISENHOWER CARLSON

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1 4. That if any party which deems it necessary to attach such Star Trak
2 documents and/or and car maintenance records as an exhibit to any
3 papers filed with the Court in this matter, then they shall do so only
4 under seal so that members of the public will not have access to the
5 Star Trak documents;

6
7 5. That if any Star Trak documents or car maintenance records are made
8 exhibits to a deposition in this case all such exhibits must be sealed
9 and any such deposition exhibit so sealed, if it be thereafter filed in the
10 Court before which this matter is pending, will also be filed under
11 seal.

12 IT IS SO STIPULATED.

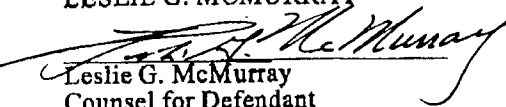
13 Dated: March 24, 2006

LUKINS & ANNIS


JED W. MORRIS
Counsel for Defendant
BNSF RAILWAY COMPANY

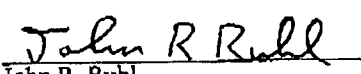
16 Dated: March 22, 2006

LAW OFFICES OF
LESLIE G. MCMURRAY


Leslie G. McMurray
Counsel for Defendant
BNSF RAILWAY COMPANY

20 Dated: March 22, 2006

EISENHOWER & CARLSON, PLLC


John R. Ruhl
Counsel for plaintiff
PRODUCE COUNTRY

24 Dated: March __, 2006

MILLER, MERTENS & SPANNER,
PLLC

26 BRANDON JOHNSON
27 Counsel for Defendants
28 TRI-CITY RAILROAD COMPANY,
LLC.; WASHINGTON STATE
TRANSLOAD COMPANY, LLC.

ORDER ON STIPULATION

PLEASE TAKE NOTICE that the court, having reviewed the stipulation of the parties set forth above, and good cause appearing therefore, hereby makes the following order:

1. Certain documents are in the possession of defendant BNSF Railway Company ("BNSF") which BNSF has identified as "the Star Trak documents."
2. Certain documents are in the possession of defendant BNSF and/or its subsidiary Western Fruit Express which BNSF has identified as "car maintenance records."
3. Star Trak documents and car maintenance records will be marked "CONFIDENTIAL" by BNSF upon disclosure of such documents to each party to this action.
4. The Star Trak documents and car maintenance records will not be disclosed to any persons other than to counsel of record for the parties and to each of those small number of persons from the named parties (or their experts) with a need to analyze the Star Trak documents and/or car maintenance records in order to effectively participate in the litigation and/or settlement of this matter.
5. That all such Star Trak documents and car maintenance records and any copies of such documents will be destroyed and disposed of within ten days of the conclusion of the litigation to counsel for BNSF.

